

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Federal-State Joint Board)	
On Universal Service)	CC Docket No. 96-45
)	
Request for Comment on Certain of the)	
Commission's Rules Relating to High-Cost)	
Universal Service Support and the)	
ETC Designation Process)	

**REPLY COMMENTS OF THE
ALABAMA RURAL LOCAL EXCHANGE CARRIERS
("Alabama LECs")**

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June 3, 2003

Reply Comments of the Alabama Rural LECs
June 3, 2003

CC Docket 96-45

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Summary

Congress, in enacting the Telecommunications Act of 1996, recognized that providing universal service support to multiple ETCs in certain rural portions of the country would not be in the “public interest.” The Alabama Rural Local Exchange Carriers (“Alabama LECs”) hereby submit these Reply Comments in the above-referenced proceeding, to express concurrence with those parties advocating that specific standards and requirements be placed on CETC applicants, that CETCs serve the entirety of the Rural ILEC’s study area, and high-cost support to CETCs be based on their own costs, not the costs of the affected ILEC. The Alabama LECs also support the comments of those who have advocated that the certification process associated with a rural ETC Designation be based on a thorough cost/benefit analysis. The Alabama LECs believe that these measures are far preferable to arbitrary caps on universal service support.

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The Alabama Rural Local Exchange Carriers ("Alabama LECs") hereby submit these Reply Comments in the above-referenced proceeding. The purpose of these Reply Comments is to express concurrence with those parties advocating that specific standards and requirements be placed on CETC applicants, that CETCs serve the entirety of a rural ILEC's study area, and high-cost support to CETCs be based on their own costs, not the costs of the affected ILEC. The Alabama LECs also support those who have advocated that the Public Interest Analysis associated with a rural ETC Designation be based on a thorough cost/benefit analysis. The Alabama LECs believe that these measures are far preferable to arbitrary caps on universal service support.

I. The Public Interest Analysis As Currently Applied In The ETC Designation Process Is Flawed.

The public interest determination required by § 214 of the 1996 Act¹ in the ETC Designation Process must address the Communications Act's "dual goals of preserving universal service and fostering competition."² Indeed, "the Act does not even contemplate the use of universal funds for any purpose other than to preserve and advance universal service."³

The Alabama LECs agree with the position articulated by the Alaska Telephone Association ("ATA") and others that the introduction of additional competition in rural areas does not equate with a public interest determination.⁴ If that were the case, then Congress did a meaningless thing by enacting § 214(e)(2).⁵ The promotion of competition through an additional eligible telecommunications carrier ("ETC") designation in an area served by a rural telephone company is appropriate only after the public interest analysis has been diligently undertaken. At a minimum, the public interest test should only be satisfied if the state or FCC is reasonably certain that: (1) the designation will not result in excess compensation to the CETC; (2) high-cost funding will only be provided for service used in the high cost area; (3) a system is in place

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* ("Communications Act", "1996 Act" or "Act"). Any references to section 254 in these Reply Comments refer to the universal service provisions of the 1996 Act, which are codified at 47 U.S.C. § 254 of the Act.

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7. 2003.)

³ Comments of CenturyTel at 18.

⁴ Comments of ATA at 4.

to ensure that the applicant provides ubiquitous service to all portions of the service area; and (4) that granting the application will not otherwise threaten the long term viability of universal service in the area. The Alabama LECs further urge the Joint Board to give careful consideration to the standardized criteria advocated by OPASTCO in its white paper entitled *Universal Service In Rural America: A Congressional Mandate At Risk*.⁶

Provision of scarce universal service dollars to entities *already* serving rural areas does not spur competitive entry nor is it likely to increase rural customer service options, as long as ETC Designation Orders fail to include any safeguards to ensure that Designees will actually use the new funds to increase coverage to the most remote portions of the rural areas, including the residences or billing address of the Designees' wireless subscribers.⁷ It is certain, however, to significantly increase the demands on the Universal Service Fund ("USF") in the name of competition.⁸

⁵ *Id.*

⁶ A copy of *Universal Service in Rural America: A Congressional Mandate At Risk* filed with the OPASCO Comments.

⁷ See, e.g. *RCC Holdings, Inc. ("RCC") Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, DA 02-3181 (rel. Nov. 27, 2002) ("RCC Order"); *Cellular South License, Inc. ("CellSouth") Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, DA 02-3317 (rel. Dec. 4, 2002) ("CellSouth Order") (RCC Order and CellSouth Order, collectively, "Alabama Designation Orders").

⁸ Comments of ICORE at 8.

II. CETCs Should Not Receive High Cost Support For Serving A Wireless Customer Unless The CETC Can Document That Such Customer Predominately Uses The Service In The High Cost Area.

CenturyTel discusses how the “customer list” scenario results in an economic windfall to wireless CETCs seeking funding from the USF for areas that the carrier already serves.⁹ Regardless of whether a wireless CETC will actually acquire new customers or will spend a dime of the new high cost support to extend service to marginal areas, it “may obtain funding for its entire existing customer base – its ‘customer list’ – in the relevant service area immediately upon certification....”¹⁰

Customers of rural ILECs do not “travel” with their wireline telephones away from their rural, isolated residences. Consequently, regulators can be reasonably assured that the universal service support that such ILECs receive will be used “only for the provision, maintenance, and upgrading of facilities for which the support is intended.”¹¹ In contrast, most, and in some cases all, of a wireless CETC customer’s usage occurs away from such customer’s billing address. Indeed, most such usage may occur outside the wireless CETC’s designated ETC service area. Under recent orders issued by the WCB, wireless CETCs are currently receiving high cost support based solely on a rural billing address regardless of whether that customer uses his telephone in the rural area, *or even has wireless coverage at his residence*. This is an absurd result.

⁹ Comments of CenturyTel at 14.

¹⁰ *Id.*

Since the service area in which a rural customer resides may not correspond to where the customer uses a wireless CETC's service, the Universal Service Fund will be negatively affected and its intended beneficiaries – rural customers, harmed. Additionally, wireless CETCs will receive support for which they will not be accountable in contravention of § 254 and the Commission's articulated goals:

“[W]e intend to develop a long-term plan that *better targets support to carriers serving high-cost areas*, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers.”¹²

The Alabama LECs agree with the proposal of several commentators, including CenturyTel and the Washington Independent Telephone Association, that universal service support not be provided for a line unless and until the wireless CETC documents that at least 50% of the originating calls for the customer originate in a cell site that provides coverage for the customer location for which USF support has been granted. The Commission should impose a periodic audit regime to ensure the validity of such projections.

III. CETC Designations In Rural Areas Should Be Granted At The Study Area Level.

The Act “specifies that the service area of a rural carrier means such company's ‘study area’ unless and until the Commission and the States, after taking into account recommendations of the Federal-State Joint Board ... establish a different definition of service area for such

¹¹ The 1996 Act.

¹² *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket 96-45 and Report and

company.”¹³ The Joint Board has inquired whether, in making this public interest determination, state or federal regulators should consider the existence of disaggregation zones.

The WCB has previously suggested that there is little risk of “cream skimming” where rural telephone companies have been permitted to disaggregate their support to below the study area level.¹⁴ This conclusion is based on a myopic view of rural telephony. The disaggregation options available to rural ILECs do not eliminate the “cream skimming” advantages enjoyed by CMRS providers. Unlike CMRS providers, rural ILECs are comprehensively regulated, with their access charges and local rates averaged throughout their service territory. They are thus unable to adjust prices and terms of service to reflect cost differences. In contrast, CMRS providers are unencumbered in their ability to reflect cost differences through pricing and service terms or, as noted above, by simply not providing coverage to a very high cost location in its service coverage area. “Rural ILECs, in fulfilling their universal service and carrier of last resort obligations, provide high quality, reliable, facilities-based services, for all supported services, to everyone in the study area. Potential ETCs should have to do no less.”¹⁵

Order, CC Docket 00-256, 16 F.C.C.R. 11,244 (2001) (“*Fourteenth Report and Order*”) at para. 8 (footnote omitted).

¹³ Comments of CenturyTel at 25 and 26 (quoting § 214(e)(1)).

¹⁴ “Additionally, we conclude that designation of RCC Holdings as an ETC does not raise the rural creamskimming concerns alleged by the Alabama Rural LECs and NTCA. Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company’s study area.” Alabama Designation Orders at para. 27.

¹⁵ Comments of ICORE at 14.

IV. Support For CETCs In Rural Service Areas Should Be Calculated Using Their Own Costs.

CETCs operating in rural ILEC service areas currently receive the same per-line support amount as the ILEC, which is generally based in the rural ILEC's embedded costs.¹⁶ The Joint Board has sought comment regarding this policy, and the extent to which a CETC's costs differ from that of an incumbent ILEC serving the same area. The question highlights another fundamental disparity in the current system, where CETCs, unlike ILECs, have no obligation to submit cost studies or otherwise provide cost data. CETCs should be obligated to provide the same level of detailed cost reporting as ILECs, differing only to the extent necessary to reflect the type of technology used.

Even without the benefit of cost data, the Joint Board can take notice that CMRS providers do not have physical loop costs, and in most cases benefit from economies of scale much greater than the rural ILEC serving the same area. "A wireless CETC may experience a windfall if it is allowed to receive high-cost support based on a rural LEC's higher average costs of the service area in which the customer's address is located, while service actually is used primarily in a relatively low-cost area."¹⁷ Additionally, "[s]ince the level of funding is determined by the cost per line of the incumbent LEC, if a new ETC's costs are substantially lower for any reason, the result is a windfall to the new ETC."¹⁸ The Alabama LECs concur

¹⁶ C.F.R. §36.154(c), 47 C.F.R. §54.301, 47 C.F.R. §69.612, 47 C.F.R. Part 54, Subpart K. For "average schedule" ILECs, local switching and high-cost loop support are developed using industry data.

¹⁷ *Id.*

¹⁸ Comments of ATA at 11.

with these statements.

The current rules are not competitively neutral because they fail to recognize that ILECs and CETCs are not similarly situated. The differences extend beyond the local loop. ILECs are required to charge for local and access services based on averaged rates that are fixed by tariff, while CETCs generally have unfettered discretion in setting rates and terms of service. ILECs are required to offer equivalent, high quality service to everyone in their service territory (under the watchful eye of state regulators),¹⁹ while CETCs are required only to make the barest of representations regarding future service as part of their designation process.²⁰ Furthermore, to the extent that facility based CETCs actually undertake to serve the most cost areas, in many cases they can avoid costly infrastructure investments by reselling the rural ILEC's highest-cost loops.

V. Equal Access Should Be Added To The List Of Supported Services.

ILECs are required to provide equal access, an obligation not shared by CETCs. Carriers that are not burdened by equal access requirements have greater flexibility to price and/or bundle toll services in order to respond to cost differentials or competition. Competitive neutrality

¹⁹ For example, in Alabama, ILECs are subject to strict service quality standards addressing issues such as system capacity, call completion percentages, etc. Rule T-21, Telephone Rules of APSC (June 29, 2000).

²⁰ This disparity was highlighted in the recent WCB orders granting ETC status to RCC Holdings, Inc., and Cellular South Licenses, Inc. As pointed out by the Alabama Rural ILECs, the Alabama Public Service Commission proactively monitors service availability in rural ILEC areas as part of its ongoing regulatory supervision of incumbent ILECs. On the other hand, the WCB granted ETC status to both wireless carriers despite unrefuted evidence of coverage gaps, and without imposition of an ongoing monitoring process to ensure that the ETC requirements were met in the future.

demands that any carrier seeking ETC support in rural areas be likewise responsible for offering equal access. Equal access should thus be added to the list of services supported by the USF program.

VI. Artificial Caps On Rural Universal Support Should Be Avoided.

OPASTCO correctly observes that artificial caps on rural high cost support, either in overall support levels or on a per-line basis, are not only unnecessary, but would violate the requirements of § 254(b)(5) of the 1996 Act that such support be predictable and sufficient.²¹ Further, limiting support to primary lines and/or primary residences will create an administrative nightmare, and open the gates for yet another form of slamming as a customer's "primary line" choice is changed. Further, a limit on funding for second lines would make rates for such lines not comparable to those in urban areas, contrary to the intent of § 254(b)(3) of the 1996 Act.

Such concerns about the growth of the fund are well founded, however. They are best addressed by simply taking steps to ensure that high cost funding is truly used for its intended purpose,²² that applicants seeking ETC status are on a level playing field with ILECs,²³ and that a CETC's high cost funding is based on its own costs.²⁴ While coupled with a more rigorous application of the "public interest" test for rural certification, these measures should forestall any need for an overall or per line cap, or limits on second line support.

²¹ OPATSCO Comments, p. 21.

²² *See supra* pp. 3-5.

²³ *See supra* p. 8.

²⁴ *See supra* pp. 6-8.

CONCLUSION

The Joint Board should use this opportunity to recommend enhanced criteria for designation of CETCs, particularly in rural areas.

Respectfully submitted,

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June 3, 2003

CERTIFICATE OF SERVICE

I, Mark D. Wilkerson, hereby certify that on this 3rd day of June, 2003, a true and correct copy of the above and foregoing REPLY COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS, unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

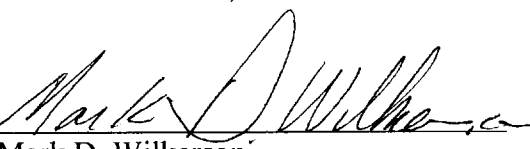
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